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ACTION.

Where a statute for the condemnation of lands for a public use provides a definite and complete remedy for obtaining compensation, such remedy is exclusive. *Kaukauna Water Power Co.* v. *Green Bay and Miss. Canal Co.*, 254.

See RAILROAD, 2 (4);
RIPARIAN OWNER, 3.

ADMIRALTY.

See WRIT OF PROHIBITION.

ADVERSE POSSESSION.

The commission of a trespass on real estate, and the commission of acts of waste upon it do not constitute a possession which in itself would drive the owner to an action of ejectment, and prevent him from filing a bill *quia timet*. *Simmons Creek Coal Co.* v. *Doran*, 417.

See CAVEAT EMPTOR.

ALIEN IMMIGRANT.

See CONSTITUTIONAL LAW, A, 24;
HABEAS CORPUS, 2.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. The statutes of Texas in relation to assignments for the benefit of creditors, 1 Sayles's Civil Stats. 61, 62, 68, Arts. 65*a*., 66*c*. and 65*s*., do not contemplate an assignment of partnership property only by partners for the benefit of creditors, and while such an assignment may be valid as to creditors who accept its provisions, creditors who do not may levy upon the property conveyed by it, subject, it may be, to the rights of the accepting creditors. *Kennedy* v. *McKee*, 606.
2. The question of the construction and effect of a statute of a State, regulating assignments for the benefit of creditors, is a question upon which the decisions of the highest court of the State, establishing a rule of property, are of controlling authority in the courts of the United States. *South Branch Lumber Co.* v. *Ott*, 622.
3. The decisions of the highest court of Iowa with regard to the statute of that State regulating such provisions now codified in section 2115 of

the Code, hold: (1) that it does not prevent partial assignments with preferences or sales or mortgages of any or all of the party's property in payment of or security for indebtedness; its operation being limited to the matter of general assignments: (2) that several instruments, executed by a debtor at about the same time, may be considered as parts of one transaction, and as in law forming but one instrument; and if, so construed, they have the effect of a general assignment with preferences, they are within the denunciation of the statute: (3) that although several instruments may be executed by the debtor at about the same time, they do not necessarily create one transaction, nor must they necessarily be considered as one instrument; but the decision of whether they do or not, and whether they come within the denunciation of the statute, or not, must depend, in each case, upon the character of the instruments, the circumstances of the case and the intent of the parties. *Ib.*

4. When the effect of invalidating such an assignment, without preferences on its face, by reason of previous preferential transactions claimed to be part of it, will be to let in to preference another creditor attaching after the assignment, the court will be justified in adhering to the letter of the statute, when the circumstances permit it. *Ib.*

BANKRUPT.

1. In December, 1871, Y., who was a member of the stock exchanges in New York and in Philadelphia, was declared to be a bankrupt. At that time his seat in the New York Exchange was worth about $4000, and the other about $2000. By the rules of each, membership, in case of failure, was suspended until settlement with its members who were creditors, and the seat in each was liable to be sold and the proceeds applied to the payment of the debts of such of its members. At the time of his failure the indebtedness of Y. to members of the New York Exchange amounted to about $8500, and to members of the Philadelphia Exchange to nearly $22,000. The assignees notified each exchange of their appointment, but took no steps to adjust the debts or to acquire the seats, which were appraised as of no value. Within two years Y. notified them that assessments on the seats were overdue. They told him he was the proper party to pay them, and that what he might pay would be recognized as properly to be refunded, in case the seats should be sold by them. Y. was discharged in bankruptcy in 1873. From his private means he paid all assessments overdue and from time to time maturing, and eventually settled with all the creditor members. Such members had proved their debts against his estate in bankruptcy, and in the several settlements he had the benefit of the dividends (28 per cent) paid by the assignees. Having thus settled all such debts he was, in June, 1883, reinstated in his membership in the Philadelphia board, and in December, 1883, in his membership in the New York board. At that time the

value of the Philadelphia seat was about $6000, and of the New York seat about $20,000. In November, 1885, the assignees filed bills against Y. and each board, to have these memberships decreed to be assets of the bankrupt's estate. *Held*, (1) That the assignees must be deemed to have elected not to accept these rights as property of the estate; (2) That Y. was not their trustee in expending his own money to give value to a property which was worthless and abandoned; (3) That the assignees could not be permitted to avail themselves of the result of his action, or to take the property to work out a return of the dividends paid to these particular creditors. *Sparhawk* v. *Yerkes*, 1.

2. Sections 5105 and 5106 of the Revised Statutes relate to different classes of debts against a bankrupt; the former to debts that are proved, the latter to debts that are provable but not proved. *Scott* v. *Ellery*, 381.

3. A mortgage creditor of a bankrupt obtained a decree for the foreclosure of the mortgage, under which the property was sold for less than the mortgage debt. He proved the remainder, deducting the amount received from the sale, in the bankruptcy proceedings. After the discharge of the bankrupt he obtained a decree in the foreclosure proceeding against the debtor for the balance due on the mortgage debt. *Held*, that by proving his debt in bankruptcy he waived his right, pending the question of discharge, to take a deficiency decree against the bankrupt; that after the discharge the right to such a decree was lost altogether; that the debtor was not bound, after his discharge, to give any attention to the foreclosure suit; and that, under the circumstances, the obtaining a deficiency decree amounted to a fraud in law. *Ib.*

BILL OF EXCHANGE.

A bill of exchange is not negotiated within the meaning of § 537, Rev. Stats. Missouri ed. 1879, (§ 723, ed. 1889,) while it remains in the ownership or possession of the payee. *Hall* v. *Cordell*, 116.

See CONTRACT, 2.

CASES AFFIRMED.

1. *Hopkins* v. *McClure*, 133 U. S. 380; *Hale* v. *Akers*, 132 U. S. 554; and *Henderson Bridge Co.* v. *Henderson City*, 141 U. S. 679, affirmed. *Hammond* v. *Johnston*, 73.

2. *In re Wood*, 140 U. S. 278, followed. *McElvaine* v. *Brush*, 155.

3. *Rutherford* v. *Greene*, 2 Wheat. 196, cited and followed. *Deseret Salt Co.* v. *Tarpey*, 241.

4. *Wisconsin Central Railroad* v. *Price County*, 133 U. S. 496, approved. *Deseret Salt Co.* v. *Tarpey*, 241.

5. *New Orleans Water Works Co.* v. *Louisiana Sugar Refining Co.*, 125 U. S. 18, affirmed and applied. *St. Paul, Minneapolis & Manitoba Railway Co.* v. *Todd County*, 282.

6. *Ayers* v. *Watson*, 137 U. S. 584, affirmed and applied. *Simmons Creek Coal Co.* v. *Doran*, 417.
7. *United States* v. *Mosby*, 133 U. S. 273, affirmed and applied. *Phelps* v. *Siegfried*, 602.
8. *Oberteuffer* v. *Robertson*, 116 U. S. 499, affirmed and applied. *Magone* v. *Rosenstein*, 604.

See LACHES, 2;
PUBLIC LAND, 14.

CASES DISAPPROVED.

See CONSTITUTIONAL LAW, A, 16.

CASES DISTINGUISHED OR EXPLAINED.

1. *New Jersey Steamboat Co.* v. *Brockett*, 121 U. S. 637, distinguished. *New Orleans & Northeastern Railroad Co.* v. *Jopes*, 18.
2. *Hughes* v. *Blake*, 6 Wheat. 453, explained and distinguished from this case. *Pearce* v. *Rice*, 28.
3. *Brownsville* v. *Loague*, 129 U. S. 493, examined and explained. *Franklin County* v. *German Savings Bank*, 93.
4. *Medley, Petitioner*, 134 U. S. 160, explained. *McElvaine* v. *Brush*, 155.
5. *Lake County* v. *Graham*, 130 U. S. 674, and *Dixon County* v. *Field*, 111 U. S. 83, affirmed and distinguished from this case. *Chaffee County* v. *Potter*, 355.

CAVEAT EMPTOR.

1. The rule of *caveat emptor* applies exclusively to a purchaser, who must take care, and make due inquiries, and is bound by constructive as well as by actual notice — the latter being equivalent in effect to the former: but, in applying the rule, each case must be governed, in these respects, by its own peculiar circumstances. *Simmons Creek Coal Co.* v. *Doran*, 417.
2. Actual and unequivocal adverse possession is notice to a purchaser of land: because it is incumbent upon him to ascertain by whom and in what right it is held, and the unexplained neglect of this duty is equivalent to notice. *Ib.*
3. In this case the defendants had such notice as to put them on inquiry, and to charge them with knowledge of the facts. *Ib.*

See CORPORATION;
RESCISSION OF CONTRACT.

COMMON CARRIER.

See RAILROAD, 1.

CONFLICT OF LAWS.

See CONTRACT, 2.

CONSTITUTIONAL LAW.

A. Of the United States.

1. In order to constitute a violation of the constitutional provision against depriving a person of his own property without due process of law, it should appear that such person has a property in the particular thing of which he is alleged to have been deprived. *New Orleans* v. *New Orleans Water Works Co.*, 79.

2. The contract between the city of New Orleans and the Water Works Company, which forms the basis of these proceedings, was void as being *ultra vires;* and, having been repudiated by the city, cannot now be set up by it as impaired by subsequent state legislation. *Ib.*

3. A municipal corporation, being a mere agent of the State, stands in its governmental or public character, in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked without the impairment of any constitutional obligation; but such a corporation, in respect of its private or proprietary rights and interests, may be entitled to constitutional protection. *Ib.*

4. There was no contract between the city and the Water Works Company, which was protected against state legislation by the Constitution of the United States. *Ib.*

5. The repeal of a statute providing that a municipal government may set off the taxes of a water company against the company's rates for water, and the substitution of a different scheme of payment in its place, does not deprive the municipality of its property without due process of law, in the sense in which the word "property" is used in the Constitution of the United States. *Ib.*

6. The provisions in the New York Code of Criminal Procedure, (§§ 491, 492,) respecting the solitary confinement of convicts condemned to death, are not in conflict with the Constitution of the United States, as they are construed by the Court of Appeals of that State. *McElvaine* v. *Brush*, 155.

7. A state statute which requires every corporation, person or association operating a railroad within the State to pay an annual tax for the privilege of exercising its franchises therein, to be determined by the amount of its gross transportation receipts, and further provides that, when applied to a railroad lying partly within and partly without the State, or to one operated as a part of a line or system extending beyond the State, the tax shall be equal to the proportion of the gross receipts in the State, to be ascertained in the manner provided by the statute, does not conflict with the Constitution of the United States; and the tax thereby imposed upon a foreign corporation, operating a line of railway, partly within and partly without the State, is one within the power of the State to levy. *Maine* v. *Grand Trunk Railway Co.*, 217.

8. Proceedings under a state statute enacted before the adoption of the Fourteenth Amendment which, if taken before its adoption, would

not have violated the Constitution, may, when taken after its adoption, violate it, if prohibited by that amendment. *Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 254.

9. Under the circumstances disclosed in this case, there was no taking of the property of the plaintiff in error without due process of law. *Ib.*
10. The provisions in c. 40 of the General Statutes of South Carolina of 1882, requiring the salaries and expenses of the state railroad commission to be borne by the several corporations owning or operating railroads within the State, are not in conflict with the provision in the Fourteenth Amendment to the Constitution that a State shall not "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Charlotte, Augusta & Columbia Railroad Co.* v. *Gibbes*, 386.
11. It is again decided that private corporations are persons within the meaning of that amendment. *Ib.*
12. Requiring the burden of a public service by a corporation, in consequence of its existence and of the exercise of privileges obtained at its request, to be borne by it, is neither denying to it the equal protection of the laws, nor making any unjust discrimination against it. *Ib.*
13. Under the 5th Amendment to the Constitution of the United States, which declares that "no person . . . shall be compelled in any criminal case to be a witness against himself," where a person is under examination before a grand jury, in an investigation into certain alleged violations of the interstate commerce act of February 4, 1887, 24 Stat. 379, and the amendatory act of March 2, 1889, 25 Stat. 855, he is not obliged to answer questions where he states that his answers might tend to criminate him, although § 860 of the Revised Statutes provides that no evidence given by him shall be in any manner used against him, in any court of the United States, in any criminal proceeding. *Counselman* v. *Hitchcock*, 547.
14. The case before the grand jury was a criminal case. *Ib.*
15. The meaning of the constitutional provision is not merely that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself; but its object is to insure that a person shall not be compelled, when acting as a witness in any investigation, to give testimony which may tend to show that he himself has committed a crime. *Ib.*
16. The ruling in *People* v. *Kelly*, 24 N. Y. 74, that the words "criminal case" mean only a criminal prosecution against the witness himself, disapproved. *Ib.*
17. The protection afforded by § 860 is not co-extensive with the constitutional provision. *Ib.*
18. Adjudged cases on this subject, in courts of the United States, and of the States, reviewed. *Ib.*
19. As the manifest purpose of the constitutional provisions, both of the

States and of the United States, is to prohibit the compelling of testimony of a self-criminating kind from a party or a witness, the liberal construction which must be placed on constitutional provisions for the protection of personal rights, would seem to require that the constitutional guaranties, however differently worded, should have as far as possible the same interpretation. *Ib.*

20. It is a reasonable construction of the constitutional provision, that the witness is protected from being compelled to disclose the circumstances of his offence, or the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction without using his answers as direct admissions against him. *Ib.*
21. No statute which leaves the party or witness subject to prosecution, after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the constitution. *Ib.*
22. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates. *Ib.*
23. The witness, having been committed to custody for his refusal to answer, is entitled to be discharged on *habeas corpus*. *Ib.*
24. The act of March 3, 1891, c. 551, forbidding certain classes of alien immigrants to land in the United States, is constitutional and valid. *Nishimura Ekiu* v. *The United States*, 651.

See CRIMINAL LAW, 3; INSPECTOR OF IMMIGRATION; EXPRESS COMPANIES; TAX AND TAXATION, 2, 3.

B. OF THE STATES.

1. The act of the legislature of Missouri of May 16, 1889, "to define express companies, and to prescribe the mode of taxing the same, and to fix the rate of taxation thereon," imposes a tax only on business done within the State, and does not violate the requirements of uniformity and equality of taxation prescribed by the constitution of the State of Missouri. *Pacific Express Co.* v. *Seibert*, 339.
2. The legislative and constitutional provision of the State of South Carolina that taxation of property shall be equal and uniform and in proportion to its value, is not violated by exacting a contribution according to their gross income of the several railroads, in proportion to the number of miles of railroad operated within the State, in order to meet the special service required of the State Railroad Commission. *Charlotte, Columbia & Augusta Railroad Co.* v. *Gibbes*, 386.

CONSTRUCTIVE NOTICE.

See CAVEAT EMPTOR, 1, 2; CORPORATION.

CONTRACT.

1. When a contract for the payment of money at a future day, with interest meanwhile payable semi-annually, is made in one place, and is to be performed in another, both as to interest and principal, and the interest before maturity is payable according to the legal rate in the place of performance, the presumption is, in the absence of attendant circumstances to show the contrary, that the principal bears interest after maturity at the same rate. *Coglan* v. *South Carolina Railroad Co.*, 101.

2. The obligation to perform a verbal agreement, made in Missouri, to accept and pay, on presentation at the place of business of the promisor in Illinois, all drafts drawn upon him by the promisee for live stock to be consigned by the promisee from Missouri to the promisor in Illinois, is to be determined by the law of Illinois, the place of performance, and not by the law of Missouri. *Hall* v. *Cordell*, 116.

3. The plaintiff agreed to construct a flour mill for the defendant, the work to be done at a specified day. After the expiration of that day defendant wrote to plaintiff that the mill was satisfactory, but that the corn-rolls did not work to his satisfaction, and that when they were made to do satisfactory work he should be ready to pay for the entire work. This was completed and accepted within about two months. *Held*, that this amounted to an agreement to pay if the completion was done within a reasonable time, and that this was a question for the jury to determine, under proper instructions from the court. *Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 128.

4. An oil company contracted with a railway company to purchase certain rolling stock and lease the same to the railway company at an agreed rental, the latter agreeing to purchase the same on or before a given day and pay for it in cash, or if it should be unable to do so to turn it over to the oil company, at the expiration of the contract, in good order and condition. It was further agreed that freights earned by the railway by transportation for the oil company might be applied to the payment of the rental and of the purchase money. The railway company was insolvent and, before the expiration of the contract, its mortgage bondholders had proceedings instituted in equity for the foreclosure of their mortgage, in which W. was appointed receiver. The receiver continued to use the rolling stock. The oil company intervened claiming to recover from the receiver the balance of the purchase money, and to secure the carrying out of the contract by the receiver, and the retention by it of the amount of freights due from it, and their application to the payments of the rent and the purchase money. The receiver answered, declining to complete the contract, and averring that the rental had been paid in full and that there was a balance due him for freight. He also filed a cross-petition to recover the surplus. *Held*, (1) That the contract provided that if the railway company became unable to pay its current debts in the ordinary course

of business, it should be released from its obligation on returning the property; (2) That the receiver had the right to return the property, upon complying with the terms of the contract in respect thereto; (3) That notwithstanding the absence of a provision in the contract forfeiting payments already made, in case of failure to complete the purchase, it was open to doubt whether an action at common law would lie to recover such payments; (4) That the dismissal of the intervening petition did not necessarily involve the dismissal of the cross-petition, and that the court might do full justice between the parties; (5) That the receiver was as much entitled to recover the money due upon the contract made with the railway company as with himself; (6) That as between the railway company and the receiver, the latter was entitled to the money, subject to any valid set-off of the oil company. *Sun Flower Oil Co.* v. *Wilson*, 313.

5. It is not necessary that a party should formally agree to be bound by the terms of a contract to which he is a stranger, if, having knowledge of such contract, he deliberately enters into relations with one of the parties, which are only consistent with the adoption of such contract. *Wiggins Ferry Co.* v. *Ohio & Mississippi Railway Co.*, 396.

See EQUITY, 1;
JURISDICTION, A, 3, 9;
RESCISSION OF CONTRACT.

CORPORATION.

When each and all of the individuals who organize a corporation under a state law had knowledge, or actual notice, of a defect in the title to lands acquired by the corporation through them, their knowledge or actual notice was knowledge or notice to the company, and if constructive notice bound them it bound the company. *Simmons Creek Coal Co.* v. *Doran*, 417.

See CONSTITUTIONAL LAW, A, 7, 11, 12.

COURT AND JURY.

The judge presiding at a trial, civil or criminal, in any court of the United States, may express his opinion to the jury upon the questions of fact which he submits to their determination. *Simmons* v. *United States*, 148.

See CONTRACT, 3;
JURISDICTION, A, 4.

COURTS OF STATES.

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 2;
JURISDICTION, A, 7.

CRIMINAL LAW.

1. An indictment on Rev. Stat. § 5209, is sufficient, which avers that the defendant was president of a national banking association; that by

virtue of his office he received and took into his possession certain bonds (described), the property of the association; and that, with intent to injure and defraud the association, he embezzled the bonds and converted them to his own use. *Claassen* v. *United States*, 140.

2. In a criminal case, a general judgment upon an indictment containing several counts, and a verdict of guilty on each count, cannot be reversed on error if any count is good and is sufficient to support the judgment. *Ib.*

3. When it is made to appear to the court during the trial of a criminal case that, either by reason of facts existing when the jurors were sworn, but not then disclosed or known to the court or by reason of outside influences brought to bear on the jury pending the trial, the jurors or any of them are subject to such bias or prejudice as not to stand impartial between the government and the accused, the jury may be discharged, and the defendant put on trial by another jury, and the defendant is not thereby twice put in jeopardy, within the meaning of the Fifth Amendment to the Constitution of the United States. *Simmonds* v. *United States*, 148.

See CONSTITUTIONAL LAW, A, 6, 14, 16;
EVIDENCE, 2.

CUSTOMS DUTIES.

1. Invoices of merchandise entitled to free entry were required in August, 1889, to conform to the requirements of sections 2853, 2854, 2855 and 2860 of the Revised Statutes. *Phelps* v. *Siegfried*, 602.

2. Soft wood boxes, imported from Sweden, containing parlor matches, or safety matches, are not subject to duty under the act of March 3, 1883, 22 Stat. c. 121, p. 488, § 7, p. 523. *Magone* v. *Rosenstein*, 604.

3. In a suit to recover back customs duties paid under protest, where the only question tried was, whether in re-appraisement proceedings the importer was denied rights secured to him by law; *Held*, (1) It was proper to admit in evidence a protest filed by the importer with the re-appraisers, as a paper showing what rights the importer claimed, and especially his claim that the merchant appraiser was not qualified; (2) A motion to direct a verdict for the defendant was properly denied, the court having ruled in accordance with the decision of this court in *Auffmordt* v. *Hedden*, 137 U. S. 310, and having instructed the jury fully and properly, and there being no exception to the charge, and a question proper for the jury. *Hedden* v. *Iselin*, 676.

See WRIT OF PROHIBITION.

DEED.

1. This being a suit to establish a deed alleged to have been executed, and not recorded, but lost, the court holds the evidence to be entirely sufficient to establish the existence and loss of that deed. *Simmons Creek Coal Co.* v. *Doran*, 417.

2. It being also a suit to correct an alleged mistake in boundaries, the court holds, on the authority of *Ayers* v. *Watson*, 137 U. S. 584, that it is well settled that, in running the line of a survey of public lands in one direction, if a difficulty is met with, and all the known calls of the survey are met by running them in the reverse direction, this may be properly done; and it applies this principle to the lines established by the court below, and holds that the evidence is clear and convincing in establishing the facts which sustain its action in that respect. *Ib.*

See EQUITY, 5.

EJECTMENT.

See ADVERSE POSSESSION.

EMINENT DOMAIN.

See ACTION;
LOCAL LAW, 2.

EQUITY.

1. F. owed H. & Co. on account about $22,000. He settled this in part by a cash payment, and in part by a transfer of promissory notes payable to himself, the payment of two of which, for $5000 each, was guaranteed by him in writing. H. & Co. transferred these notes to a bank as collateral to their own note for about $13,000. They then became insolvent, and assigned all their estate to P. as assignee for distribution among their creditors. The bank sued F. on his guaranty. He set up in defence that his indebtedness to H. & Co. grew out of dealings in options in grain and other commodities, to be settled on the basis of "differences," and that it was invalidated by the statutes of Illinois, where the transactions took place. The court held that he could not maintain this statutory defence as against a *bona fide* holder of the guaranteed notes, and gave judgment against him. Execution on this judgment being returned unsatisfied, a bill was filed on behalf of the bank to obtain a discovery of his property and the appointment of a receiver, to which F., and the maker of the notes, and R., with others, were made defendants. P., the assignee of H. & Co. was, on his own application, subsequently made a defendant. An injunction issued, restraining each of the defendants from disposing of any notes in his possession due to F. Subsequently to these proceedings F. assigned to R. the two notes which H. & Co. had transferred to the bank. P., as assignee of H. & Co., filed a cross-bill in the equity suit, showing that the judgment in favor of the bank was in excess of the balance due the bank by H. & Co. R. filed an answer and a cross-bill in that suit, setting up his claim to the said notes, and maintaining that the judgment in favor of the bank was invalid, as being in conflict with the statutes of Illinois. *Held*, (1) That the liability of F. upon the guaranty was, as between the bank and him, fixed by the judgment in the action at

law; (2) That all the bank could equitably claim in this suit was the amount actually due it from H. & Co., which was considerably less than the amount of the face of the notes; (3) That the transfer and guaranty of the notes to H. & Co. were void under the Illinois statutes, and passed no title to them or their assignee; (4) That R. was the equitable owner of the notes, and was entitled to receive them on payment to the bank of the amount of the indebtedness of H. & Co. to it; (5) That the assignment to R. having been made in good faith and for a valuable consideration, he was a person interested in the object to be attained by the proceedings within the intent of the statute. *Pearce* v. *Rice*, 28.

2. The report of the master in a suit in equity to foreclose a railroad mortgage, to whom it had been referred to take proof of the claims, found as to a bondholder, that his bonds were due and unpaid, that certain coupons had been paid, and that certain other subsequent coupons had been paid, but made no mention of the intervening coupons. No exception was taken to this report. *Held*, that it was a reasonable inference that the claimant did not offer these coupons in proof, and that the failure to find as to them could not be urged as an objection to the final decree. *Coghlan* v. *South Carolina Railroad Co.*, 101.

3. A bill in equity which alleges (1) that a statute of a State imposes a tax upon interstate commerce, and is therefore void as forbidden by the Constitution of the United States, and which sets out the provision complained of from which it appears that the tax was imposed only on business done within the State; (2) that the act denies to the complainant the equal protection of the laws of the State, and is therefore void by reason of violating the Fourteenth Amendment; and (3) that the act is not uniform and equal in its operation, and is void by reason of repugnance to the constitution of the State; and which seeks on these grounds an injunction against the collection of the tax, presents no ground justifying the interposition of a court of equity to enjoin the collection of the tax. *Pacific Express Co.* v. *Seibert*, 339.

4. The jurisdiction of equity to reform written instruments, where there is a mutual mistake, or mistake on one side and fraud or inequitable conduct on the other, is undoubted; but to justify such reformation the evidence must be sufficiently cogent to thoroughly satisfy the mind of the court. *Simmons Creek Coal Co.* v. *Doran*, 417.

5. The jurisdiction of a court of equity is maintained in a suit to determine title, when a part of the remedy sought is, to supply what was by mistake omitted from one of the title deeds; or to establish a lost deed, even though, in the latter case, proof of the fact might have been allowed to be made in an action at law. *Ib.*

See ADVERSE POSSESSION;
DEED, 1, 2;
RAILROAD, 2, (2) (4);
RESCISSION OF CONTRACT;
RIPARIAN OWNER, 5.

EQUITY PLEADING.

When, by filing a replication to a plea in equity issue is taken upon the plea, the facts, if proven, will avail the defendant only so far as in law and equity they ought to avail him. *Pearce* v. *Rice*, 28.

A general averment of fraud in a bill in equity, though repeated, is to be taken as qualified and limited by the specific facts set forth to show wherein the transaction was fraudulent; and in such case a demurrer to the bill admits only the truth of the facts so set forth and all reasonable inferences to be drawn therefrom. *United States* v. *Des Moines Navigation & Railway Co.*, 510.

See PUBLIC LAND, 19.

ESTOPPEL.

See JUDGMENT, 2.

EVIDENCE.

1. None of the original deeds in appellant's chain of title having been produced, (though certified copies were attached to the pleadings,) and no independent evidence having been offered of payments of purchase money by defendants, *Held*, that, as against complainant, the recitals in the deeds could not be relied on as proof of such payment. *Simmons Creek Coal Co.* v. *Doran*, 417.
2. On the trial of a person indicted for murder, it appeared in evidence that the killing followed an attempt to rob. The court admitted, under objections, evidence tending to show that the prisoner had committed other robberies in that neighborhood, on different days, shortly before the time when the killing took place, and exceptions were taken. *Held*, that the evidence was inadmissible for any purpose. *Boyd* v. *United States*, 450.
3. C. & Co. commenced suit against K. in Texas and caused his property to be attached on the ground that he was about to convert it or a part of it into money for the purpose of placing it beyond the reach of his creditors. K. sued C. & Co. to recover damages for the wrongful issue and levy of those attachments. On the trial of the latter case, proof was made tending to show fraud on the part of K. by putting his property into notes and placing them beyond the reach of his creditors, and, among other things he testified as a witness in his own behalf, that on the day of the levy or the next day a large amount owed to him was put into negotiable notes. On cross-examination he was asked what he had done with the notes. Plaintiff's counsel objected, and the objection was sustained. *Held*, that this was error. *Eames* v. *Kaiser*, 488.

See INSURANCE;
PRACTICE, 2, 3;
PUBLIC LAND, 14.

EXCEPTION.

When a bill of exceptions is signed during the term, and purports to contain a recital of what transpired during the trial, it will be presumed that all things therein stated took place at the trial, unless from its language the contrary is disclosed. *New Orleans & North Eastern Railroad Co.* v. *Jopes*, 18.

See PRACTICE, 1, 6.

EXPRESS COMPANIES.

A state statute which defines an express company to be persons and corporations who carry on the business of transportation on contracts for hire with railroad or steamboat companies, does not invidiously discriminate against the express companies defined by it, and in favor of other companies or persons carrying express matter on other conditions, or under different circumstances. *Pacific Express Co.* v. *Seibert*, 339.

See CONSTITUTIONAL LAW, B, 1.

FIXTURE.

See LANDLORD AND TENANT;
RAILROAD, 2 (5).

FRAUD.

See BANKRUPT, 3;
EQUITY, 4;
EQUITY PLEADING, 2;
LEGISLATIVE ACTION;
RESCISSION OF CONTRACT, 3.

HABEAS CORPUS.

1. Upon a writ of *habeas corpus*, if sufficient ground for the prisoner's detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment. *Nishimura Ekiu* v. *United States*, 651.
2. The decision of an inspector of immigration, within the authority conferred upon him by the act of March 3, 1891, c. 551, that an alien immigrant shall not be permitted to land, because within one of the classes specified in that act, is final and conclusive against his right to land, except upon appeal to the commissioner of immigration and the Secretary of the Treasury; and cannot be reviewed on *habeas corpus*, even if it is not shown that the inspector took or recorded any evidence on the question. *Ib.*

See CONSTITUTIONAL LAW, A, 23.

INDICTMENT.

See CRIMINAL LAW, 1, 2.

INSPECTOR OF IMMIGRATION.

Inspectors of immigration under the act of March 3, 1891, c. 551, are to be appointed by the Secretary of the Treasury. *Nishimura Ekiu* v. *United States*, 651.

See HABEAS CORPUS, 2.

INSURANCE.

A policy of life insurance provided as a condition, that death of the assured "by his own hand or act, whether voluntary or involuntary, sane or insane, at the time" was a risk not assumed by the insurer. A suit to recover the amount of the policy was tried on the theory on both sides, that death from a shot from a pistol fired by accident by the assured, was covered by the policy; *Held*,

(1) Evidence drawn out on the cross-examination of a witness, which has a bearing on the testimony given by him on his direct examination, is competent, especially where it relates to a part of the same conversation;

(2) An inquiry as to what conversation was had with the plaintiff's agent is not competent, if it does not appear what the subject of the conversation was or what was intended to be proved by it;

(3) In view of the contents of the proofs of death and of the evidence, the plaintiff was not estopped from claiming that the death of the assured was caused otherwise than by suicide, and it would not have been proper for the court to charge the jury that by the introduction of the proofs of death, the burden was put on the plaintiff to satisfy the jury, by a preponderance of evidence, that the assured died otherwise than by his own hand;

(4) The defendant having alleged in its answer, that the death of the assured was due to a cause excepted from the operation of the policy, it was not error for the court to charge the jury that the defendant was bound to establish such defence by evidence outweighing that of the plaintiff. *Home Benefit Association* v. *Sargent*, 691.

INTEREST.

See CONTRACT, 1.

INTERNAL REVENUE.

1. The tax imposed upon distilled spirits by Rev. Stat. § 3251, as amended by the act of March 3, 1875, 18 Stat. 339, c. 127, attaches as soon as the spirits are produced, and cannot be evaded except upon satisfactory proof, under section 3221, of destruction by fire or other casualty. *Thompson* v. *United States*, 471.

2. When distilled spirits upon which a tax has been paid are exported, they are to be regauged at the port of exportation alongside of, or on, the vessel, and the drawback allowed is to be determined by this

gauge, although a previous gauge may have shown a greater amount. *Ib.*

3. The execution of an exportation bond, under the internal revenue laws, is only evidence of an intention to export; and it is open to doubt whether the actual exportation can be considered as beginning until the merchandise leaves the port of exportation for the foreign country. *Ib.*

JUDGMENT.

1. Where a court, having complete jurisdiction of the case, has pronounced a decree upon a certain issue, that issue cannot be retried in a collateral action between the same parties, even although the evidence upon which the case was heard be sent up with the record. *Franklin County* v. *German Savings Bank*, 93.

2. Where the judgment in a former action is upon demurrer to the declaration, the estoppel extends only to the exact point raised by the pleadings or decided, and does not operate as a bar to a second suit for other breaches of the same covenants, although if the judgment be upon pleadings and proofs, the estoppel extends not only to what was decided, but to all that was necessarily involved in the issue. *Wiggins Ferry Co.* v. *Ohio & Mississippi Railway Co.*, 396.

See EQUITY, 1;
LOCAL LAW, 2.

JUDICIAL NOTICE.

See PUBLIC LAND, 1.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. In an action of ejectment in a state court in Missouri, both parties claimed under the New Madrid act, February 17, 1815, 3 Stat. 211, c. 45. In 1818 one Hammond entered on the premises, and occupied it until about 1825, claiming title from one Hunot, whose claim, under a Spanish grant, was confirmed by Congress, April 29, 1816, 3 Stat. 328, c. 159. The plaintiffs claimed as heirs of Hammond. The defendant claimed under an execution sale on a judgment obtained in a state court against Hammond in 1823, under which possession had been taken and maintained. This was fortified by a patent issued, in 1849, to Hunot, or his legal representatives. At the trial of the action in the state court, it was held that, although the legal title to the tract in dispute was in the United States at the time of the sale under the execution, yet Hammond had an equitable interest in it, which was subject to sale under execution, and that, under the statutes of Missouri, the sheriff's deed passed all his interest in the premises to the purchaser. Some Federal questions were also raised and decided adversely to the plaintiffs. Judgment being rendered for the defend-

ant, the plaintiffs sued out this writ of error. *Held*, that this ruling of the state court involved no Federal question, and was broad enough to maintain the judgment, without considering the Federal questions raised, and that the writ of error must, therefore, be dismissed for want of jurisdiction. *Hammond* v. *Johnston*, 73.

2. If it appear in a case, brought here in error from a state court, that the decision of the state court was made upon rules of general jurisprudence, or that the case was disposed of there on other grounds, broad enough in themselves to sustain the judgment without considering the Federal question, and that such question was not necessarily involved, the jurisdiction of this court will not attach. *New Orleans* v. *New Orleans Water Works Co.*, 79.
3. Before this court can be asked to determine whether a statute has impaired the obligation of a contract, it must be made to appear that there was a legal contract, subject to impairment, and some ground to believe that it had been impaired. *Ib.*
4. This court is bound by the finding of a jury in an action at law, properly submitted to them, on conflicting evidence. *Hall* v. *Cordell*, 116.
5. The plaintiff and the defendant in an action of ejectment in a state court in Colorado both claimed title under a valid entry of the original site of the city of Denver made by the probate judge under the town site act of May 23, 1844, 5 Stat. 657, c. 17, as extended to Arapahoe County in Colorado by the act of May 28, 1864, 13 Stat. 94, c. 99. The deed under which the defendant claims was executed by the probate judge and delivered several years before that executed and delivered by his successor to the plaintiff. The elder deed was assailed as defective by reason of failure in the performance by the grantee of some of the requirements of a territorial statute prescribing rules for the execution of the trust arising under the act of Congress. The Supreme Court of the State held that the elder deed, being regular on its face, and purporting to have been executed in pursuance of authority, was not open to attack in a collateral proceeding for defects or omissions in the initiatory proceedings. *Held*, that this decision proceeded upon the proper construction of a territorial law, without regard to any right, title or privilege of the plaintiff under an act of Congress, and that the writ of error must be dismissed for want of jurisdiction. *Chever* v. *Horner*, 122.
6. This court has no jurisdiction over an appeal from a Circuit Court taken September 19, 1891, from a decree entered July 7, 1890, in a case where the jurisdiction of that court depended upon the diverse citizenship of the parties. *Wauton* v. *DeWolf*, 138.
7. This court follows the adjudications of the highest court of a State in the construction of the statutes of that State. *McElvaine* v. *Brush*, 155.
8. If the adjudication of a Federal question is necessarily involved in the disposition of a case by a state court, it is not necessary that it should appear affirmatively in the record, or in the opinion of that court, that

such a question was raised and decided. *Kaukauna Water Power Co.* v. *Green Bay and Miss. Canal Co.*, 254.

9. A decision of the Supreme Court of a State, sustaining as valid a statutory contract of the State exempting the property of a railway company from taxation, but deciding that a certain class of property did not come within the terms of the exemption, is not an impairment of the contract by a law of the State, and is not subject to review in error here. *St. Paul, Minneapolis & Manitoba Railway Co.* v. *Todd County*, 282.

10. The Northern Pacific Railroad Company sold to a purchaser a tract included in the original grant to it which had never been patented, and on which the costs of survey had never been paid. The tract was sold for non-payment of taxes while Dakota was a Territory, and the purchaser paid therefor. The Supreme Court of North Dakota held that the land was not taxable when the tax was levied and assessed, and that nothing passed by the sale. The purchaser brought this action in the state court of North Dakota to recover back the purchase-money paid at the tax sale. A judgment in plaintiff's favor was reversed by the Supreme Court of the State, no question being made as to the regularity of the tax sale and proceedings. *Held*, that, the exemption of the land from taxation having been recognized by the state court, no Federal question was involved, and the writ of error must be dismissed. *Tyler* v. *Cass County*, 288.

11. There being no brief filed for defendant in error, and no argument made in his behalf, the court confines its consideration of a case brought up from a state court to the decision of the questions raised by the counsel for plaintiff in error, without considering the case in any other aspect. *Kennedy* v. *McKee*, 606.

12. The plaintiff below sued in assumpsit to recover from the defendant company the sum of $2898.18. The first count was for money had and received to the plaintiff's use, being money paid by the United States for the pilotage, hire and service of a steam vessel. The claim under this count was, that a contract had been made with the plaintiff by which he was to prosecute the claim and receive to his own use whatever he might get for it. Such claims being unassignable under Rev. Stat. § 3477, the company received the money and set up in defence as against the first count (1), that it never made the contract, and (2), that the assignment was illegal. The second count was for money due and owing plaintiff, for work and labor in the prosecution of the claim. The jury returned a verdict for less than the sum claimed, without specifying under which count the damages were assessed. The Court of Errors and Appeals of the State of Delaware affirmed the judgment on the ground that it had no power to review the finding on a question of fact, and the finding on the second count being in plaintiff's favor there was no error in the rendition of the judgment by the court below on such a finding. *Held*, that the only

Federal question raised in the case at the trial was not necessarily involved in the trial of the issue under the second count, and that, as the judgment could be sustained under that count, this court was without jurisdiction. *Delaware & Philadelphia Navigation Co.* v. *Reybold*, 636.

13. Even if a Federal question was raised in the state court, yet, if the case was decided on grounds broad enough, in themselves, to sustain the judgment without reference to the Federal question, this court will not entertain jurisdiction. *Ib.*

14. In considering the amount necessary for the jurisdiction of this court on a writ of error, not only is the amount of the judgment against the plaintiff in error to be regarded, but, in addition, the amount of a counter claim which he would have recovered, if his contention setting it up had been sustained. *Clark* v. *Sidway*, 682.

See PRACTICE, 1, 4 to 7;

WRIT OF ERROR.

B. OF CIRCUIT COURTS OF THE UNITED STATES.

See EQUITY, 3;

NATIONAL BANK, 2.

LACHES.

1. When a person, whose equity of redemption in mortgaged real estate is foreclosed, rests inactive for eleven years, with full knowledge of the foreclosure, and of the purchaser's rights claimed under it, and of his own rights, and with nothing to hinder the assertion of the latter, and then files a bill in equity to have the foreclosure proceedings declared void for want of proper service of process upon him, this court will, at least, construe the language of the returns so as to sustain the legality of the service, if that can reasonably be done, even if it should not regard it as too late to set up such a claim. *Martin* v. *Gray*, 236.

2. It appearing that the United States is only a nominal party, whose aid is sought to destroy the title of the Navigation Company and its grantees, in order to enable settlers to protect their titles, initiated by settlement and occupancy, the court holds the case of *United States* v. *Beebe*, 127 U. S. 338, to be applicable, where it was held that when a suit is brought in the name of the United States to enforce the rights of individuals, and no interest of the government is involved, the defence of laches and limitations will be sustained, as though the government were out of the case. *United States* v. *Des Moines Navigation & Railway Co.*, 510.

See BANKRUPT, 1;

RIPARIAN OWNER, 3.

LANDLORD AND TENANT.

As between landlord and tenant, or one in temporary possession of lands under any agreement whatever for the use of the same, the law is extremely indulgent to the latter with respect to the fixtures annexed for a purpose connected with such temporary possession. *Wiggins Ferry Co.* v. *Ohio & Mississippi Railway Co.*, 396.

See RAILROAD, 2 (1), (5).

LEGISLATIVE ACTION.

The knowledge and good faith of a legislature are not open to question, but the presumption is conclusive that it acted with full knowledge and in good faith; and in this case the circumstances surrounding the transaction not only preclude the idea of misconduct or ignorance on the part of the legislature, but it is clear that the Navigation Company was a *bona fide* purchaser, within the meaning of the resolution of 1861, and intended to be a beneficiary thereunder. *United States* v. *Des Moines Navigation & Railway Co.*, 510.

LEX LOCI.

See CONTRACT, 2.

LIMITATION, STATUTES OF.

See LACHES, 2;
TRUST, 3.

LOCAL LAW.

1. When land in Florida assessed for taxation is neither assessed to the owner or occupant, nor to an unknown owner, and also by an official or accurate description sufficient to impart notice to the owner, the title of the purchaser at a sale made for non-payment of the tax so assessed is not protected by the provision in the statutes of Florida limiting the right of action of the former owner, to recover the possession of the lands sold, to one year after the recording of the tax deed; but the sale and the deed are nullities within the decisions of the Supreme Court of Florida. *Bird* v. *Benlisa*, 664.
2. When a railroad company initiates proceedings in Illinois to acquire land for its road, and a defendant appears and claims ownership of the tract, and no denial is made to this claim, and only evidence as to the amount of compensation is presented for the consideration of the jury, and the jury awards a sum as such amount, the judgment should either direct the payment of this sum to such owner, or the deposit of the same with the county treasurer for his benefit. *Convers* v. *Atchison, Topeka & Sante Fé Railroad Co.*, 671.

California. *See* PUBLIC LAND, 19;
TRUST, 3.

Colorado. *See* JURISDICTION, A, 5;
MUNICIPAL BOND, 1.
Dakota. *See* TAX AND TAXATION, 1.
Iowa. *See* ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 3, 4;
MUNICIPAL BOND, 3.
Illinois. *See* EQUITY, 1.
Maine. *See* CONSTITUTIONAL LAW, A, 7.
Missouri. *See* BILL OF EXCHANGE;
CONSTITUTIONAL LAW, B, 1;
MECHANICS' LIEN, 2.
New York. *See* CONSTITUTIONAL LAW, A, 6.
South Carolina. *See* CONSTITUTIONAL LAW, A, 10.
Texas. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 1.
Wisconsin. *See* RIPARIAN OWNER, 3.

MAILS, TRANSPORTATION OF.

The postal appropriation act of July 12, 1876, c. 179, fixed a rate of pay to railroads for carrying the mails, and provided that roads constructed in whole or in part by a land grant, conditioned that mails should be transported at a rate to be fixed by Congress, should receive only 80 per cent of that rate. As applied to a line of road a part of which only was constructed with such aid, the department held, and acted in accordance therewith for many years, that it was entitled to the percentage pay for the portion of the line so constructed, and to full pay for the remainder. Subsequently, the Department reversed this construction, and claimed that the mails should be carried over the whole line at the reduced rate, and it accordingly withheld from sums due for current transportation not only the 20 per cent thereon, but a sufficient amount settle claims for past transportation on that basis. The railroad company sued to recover the pay withheld. The Court of Claims gave judgment in its favor, and this court affirms that judgment. *United States* v. *Alabama Great Southern Railroad Co.*, 615.

MANDAMUS.

1. Mandamus will not lie to compel a railroad corporation to build a station at a particular place, unless there is a specific duty, imposed by statute, to do so, and clear proof of a breach of that duty. *Northern Pacific Railroad Co.* v. *Dustin*, 492.
2. A petition for a mandamus to compel a railroad corporation to perform a definite duty to the public, which it has distinctly manifested an intention not to perform, is rightly presented in the name of the State, at the relation of its prosecuting attorney, and without previous demand. *Ib.*
3. The Northern Pacific Railroad Company (whose charter authorized it to locate, construct and maintain a continuous railroad from Lake

Superior to Puget Sound, "by the most eligible route, as shall be determined by said company," within limits broadly described, and directed that its road should "be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations and watering places, and all other appurtenances,") constructed its railroad through the county of Yakima, and stopped its trains for a while at Yakima City, then the county seat and the principal town in the county; but, on completing its road four miles further to North Yakima, a town which it had laid out on its own land, established a freight and passenger station there, and ceased to stop its trains at Yakima City. Thereupon a writ of mandamus was applied for to compel it to build and maintain a station at Yakima City, and to stop its trains there. Afterwards, and before the hearing, Yakima City rapidly dwindled, and most of its inhabitants removed to North Yakima, which became the principal town in the county, and was made by the legislature the county seat; there were other stations which furnished sufficient facilities for the country south of North Yakima; the earnings of this division of the road were insufficient to pay its running expenses; and the passenger and freight traffic of the people living in the surrounding country, considering them as a community, would be better accommodated at North Yakima than at Yakima City. *Held*, that a writ of mandamus should not issue. *Ib.*

MECHANICS' LIEN.

1. A mechanics' lien is a creature of statute, not created by contract, but by statute, for the use of the materials, work and labor furnished under the contract, and the contract is presumably entered into in view of the statute. *Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 128.
2. It is settled law in Missouri that a contractor does not waive his right to file a mechanics' lien by receiving from the owner of the building a promissory note for the amount due, payable at a time beyond the expiration of the period within which he is required to file his lien; but, within the period within which suit must be commenced to enforce the lien, the taking of the note merely suspends the right of action. *Ib.*

MISTAKE.

See EQUITY, 4.

MORTGAGE.

See BANKRUPT, 3.

MOTION FOR NEW TRIAL.

See PRACTICE, 5.

MUNICIPAL BOND.

1. A statement, in the bond of a municipal corporation, that it is issued under the provisions of the act of the general assembly of Colorado of February 21, 1881, and in conformity with its provisions; that all the requirements of law have been fully complied with; that the total amount of the issue does not exceed the limits prescribed by the constitution of that State; and that the issue of the bonds had been authorized by a vote of a majority of the duly qualified electors of the county, voting on the question at a general election duty held, estops the county, in an action by an innocent holder for value to recover on coupons of such bonds, from denying the truth of these recitals. *Chaffee County* v. *Potter*, 355.
2. When there is an express recital upon the face of a municipal bond that the limit of issue prescribed by the state constitution has not been passed, and the bonds themselves do not show that it had, the holder is not bound to look further. *Ib.*
3. By virtue of Art. II, sec. 3 of the constitution of Iowa of 1857, which ordains that "no county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness," negotiable bonds, in excess of the constitutional limit, issued by a school district, and sold by its treasurer for the purpose of applying the proceeds of the sale to the payment of the outstanding bonded indebtedness of the district, pursuant to the statute of Iowa of 1880, c. 132, are void as against one who purchased them from the district with knowledge that the constitutional limit is thereby exceeded. *Doon Township* v. *Cummins*, 366.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, A, 3.

NATIONAL BANK.

1. Fifty shares of the stock of a national bank were transferred to F. on the books of the bank October 29. A certificate therefor was made out but not delivered to him. He knew nothing of the transfer and did not authorize it to be made. On October 30 he was appointed a director and vice-president. On November 21 he was authorized to act as cashier. He acted as vice-president and cashier from that day. On December 12 he bought and paid for 20 other shares. On January 2 following, while the bank was insolvent, a dividend on its stock was fraudulently made, and $1750 therefor placed to the credit of F. on its books. He, learning on that day of the transfer of the 50 shares, ordered D., the president of the bank, who had directed the transfer of the 50 shares, to retransfer it, and gave to D. his check to the order of

D., individually, for $1250 of the $1750. The bank failed January 22. In a suit by the receiver of the bank against F. to recover the amount of an assessment of 100 per cent by the Comptroller of the Currency in enforcement of the individual liability of the shareholders, and to recover the $1750: *Held*, (1) in view of provisions of §§ 5146, 5147 and 5210 of the Revised Statutes, it must be presumed conclusively that F. knew, from November 21, that the books showed he held 50 shares; (2) F. did not get rid of his liability for the $1250, by giving to D. his check for that sum in favor of D. individually. *Finn* v. *Brown*, 56.

2. A national bank, located in one State, may bring suit against a citizen of another State, in the Circuit Court of the United States for the District wherein the defendant resides, by reason alone of diverse citizenship. *Petri* v. *Commercial Nat. Bank*, 644.

See CRIMINAL LAW, 1.

NAVIGABLE WATERS.

See RIPARIAN OWNER, 1, 2, 3.

NORTHERN PACIFIC RAILROAD.

See JURISDICTION, A, 10;
MANDAMUS, 3;
TAX AND TAXATION, 1.

NOTICE.

See CAVEAT EMPTOR
CORPORATION.

PARDON.

See WITNESS.

PARTNERSHIP.

Persons who jointly purchase land to hold it for a rise in value are not partners, but are tenants in common, and either party can sue the other at law for reimbursement of allowances made by him on the joint account without there having first been a final settlement and the striking of a balance. *Clark* v. *Sidway*, 682.

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 1.

POST OFFICE DEPARTMENT.

See MAILS, TRANSPORTATION OF.

PRACTICE.

1. In regard to bills of exceptions Federal courts are independent of any statute or practice prevailing in the courts of the State in which the trial was had. *Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 128.

2. Under the pleadings as framed and the issues as made up in this case the court was bound to admit evidence. *Ib.*
3. In the absence of a specification wherein evidence offered was improper or irrelevant this court is bound to presume that it was properly admitted. *Ib.*
4. A matter resting in the discretion of the trial court is not assignable for error here. *Ib.*
5. The overruling of a motion for a new trial in the court below cannot be assigned for error. *Ib.*
6. A general exception to the charge of the court as a whole cannot be considered here. *Ib.*
7. It was held that the plaintiff in error had no right to complain of the action of the court below in allowing a remittitur of $2700.75 on a verdict of $6700.75; or in allowing the jury to fill up, in open court, the amount of a verdict which they had signed and sealed, leaving a blank for the amount. *Clark* v. *Sidway*, 682.

See EQUITY, 2; JURISDICTION, A, 4;
EQUITY PLEADING; RAILROAD, 2, (5);
EXCEPTION; SOME UNREPORTED PRACTICE CASES, 704.

PRINCIPAL AND AGENT.

If an act of an employé be lawful and one which he is justified in doing, and which casts no personal responsibility upon him, no responsibility attaches to the employer therefor. *New Orleans & North Eastern Railroad Co.* v. *Jopes*, 18.

PROHIBITION, WRIT OF.

See WRIT OF PROHIBITION.

PUBLIC LAND.

1. This court takes judicial notice of facts concerning the pueblo of San Francisco, (not contradictory of the findings of the referee in this case,) which are recited in former decisions of this court, in statutes of the United States and of the State of California, and in the records of the Department of the Interior. *Knight* v. *United States Land Association*, 161.
2. It is a settled law that a patent for public land is void at law if the grantor State had no title to the premises embraced in it, or if the officer who issued it had no authority to do so; and that the want of such title or authority can be shown in an action at law. *Ib.*
3. The power to make and correct surveys of the public lands belongs exclusively to the political department of the government, and the action of that department is unassailable in the courts, except by a direct proceeding. *Ib.*
4. In matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents there-

on, and the administration of the trusts devolving on the government, by reason of the laws of Congress, or under treaty stipulations respecting the public domain, the Secretary of the Interior is the supervising agent of the government, to do justice to all claimants, and preserve the rights of the people of the United States. *Ib.*

5. The Secretary of the Interior had ample power to set aside the Stratton survey of the San Francisco pueblo lands, (although it was approved by the surveyor general of California, and confirmed by the Commissioner of the General Land Office, and no appeal was taken from it,) and to order a new survey by Von Leicht; and his action in that respect is unassailable in a collateral proceeding. *Ib.*
6. The method of running the shore line of the bay of San Francisco in the Von Leicht survey was correct. *Ib.*
7. The well-settled doctrine that, on the acquisition of the territory from Mexico, the United States acquired the title to lands under tide water in trust for the future States that might be erected out of the territory, does not apply to lands that had been previously granted to other parties by the former government, or had been subjected to trusts that would require their disposition in some other way. *Ib.*
8. The patent of the United States is evidence of the title of the city of San Francisco under Mexican laws to the pueblo lands, and is conclusive, not only as against the United States and all parties claiming under it by titles subsequently acquired, but also as against all parties except those who have a full and complete title acquired from Mexico, anterior in date to that confirmed by the decree of confirmation. *Ib.*
9. The grant of public land to the Central Pacific Railroad Company by the acts of July 1, 1862, 12 Stat. 489, c. 120, and July 2, 1864, 13 Stat. 356, c. 216, was a grant *in præsenti*, and the legal title to the granted land, as distinguished from merely equitable or inchoate interests, passed when the identification of a granted section became so far complete as to authorize the grantee to take possession. *Deseret Salt Co.* v. *Tarpey*, 241.
10. Patents were issued, not for the purpose of transferring title, but as evidence that the grantee had complied with the conditions of the grant, and that the grant was, to that extent, relieved from the possibility of forfeiture for breach of its conditions. *Ib.*
11. The provision in the statute, requiring the cost of surveying, selecting and conveying the land to be paid into the treasury before a patent could issue, does not impair the force of the operative words of transfer in it. *Ib.*
12. The railroad company could maintain an action for the possession of land so granted before the issue of a patent, and could transfer its title thereto by lease, so as to enable its lessee to maintain such an action. *Ib.*
13. The title of the Des Moines Navigation and Railway Company to lands granted to the territory of Iowa for the purpose of aiding in

the improvement of the navigation of the Des Moines River by the act of August 8, 1846, 9 Stat. 77, c. 103, and to the State of Iowa for a like purpose by the joint resolution of March 2, 1861, 12 Stat. 251, and by the act of July 12, 1862, 12 Stat. 543, c. 161, having been sustained by this court in eight litigations between private parties, to wit: in *Dubuque & Pacific Railroad* v. *Litchfield*, 23 How. 66; *Wolcott* v. *Des Moines Co.*, 5 Wall. 681; *Williams* v. *Baker*, 17 Wall. 144; *Homestead Co.* v. *Valley Railroad*, 17 Wall. 153; *Wolsey* v. *Chapman*, 101 U. S. 755; *Litchfield* v. *Webster County*, 101 U. S. 773; *Dubuque & Sioux City Railroad* v. *Des Moines Valley Railroad*, 109 U. S. 329, and *Bullard* v. *Des Moines & Fort Dodge Railroad*, 122 U. S. 167, is now held to be good against the United States, as a grant *in præsenti*. *United States* v. *Des Moines Navigation & Railway Co.*, 510.

14. Where relief can be granted only by setting aside an evidence of title issued by the government, in the orderly administration of the affairs of the Land Department, the evidence in support must be clear, strong and satisfactory. *Ib.*

15. In ejectment, plaintiff claimed title to certain parcels of land by purchase from the State of California under its selection of lands as part of the Agricultural College grant from Congress of July 2, 1862, 12 Stat. 503, c. 130; certification thereof by the United States Land Department thereunder, and subsequent patent from the State to him. Defendant claimed legal title by a prior purchase from the State under prior state selections, (1) by purchase and location of state land warrants issued by the State under the grant of 500,000 acres made to it by section eight of act of September 4, 1841, 5 Stat. 353, c. 16, and (2) by purchase of indemnity land, selected in lieu of school sections sixteen and thirty-six, granted by the act of Congress of March 3, 1853, 10 Stat. 244, c. 145, and lost by inclusion within Mexican grants subsequently confirmed; further claiming that both selections were confirmed by the first section of the Act of Congress of July 23, 1866, 14 Stat. 218, c. 219, passed before the selection, certification and patenting under which plaintiff claims. *Held*, (1) That the first section of the act of July 23, 1866, must be construed in connection with section two of that act, and, as thus construed, it did not confirm the selections under the 500,000 acre grant, those selections not having been made of lands previously surveyed by authority of the United States: but said section, thus construed, did confirm the lands selected in lieu of the school sections taken by the Mexican grants, such selected lands having been previously surveyed by authority of the United States, and notice of such selection having been given to the register of the local land office, and the lands having been sold to a *bona fide* purchaser, in good faith, under the laws of the State; (2) That confirmation to the State of its title enured to the benefit of its grantee without any further action by the land department or by the State. *McNee* v. *Donahue*, 587.

16. A legislative confirmation of a claim to land with defined boundaries, or capable of identification, perfects the title of the claimant to the tract, and a subsequent patent is only documentary evidence of that title. *Ib.*

17. No title to lands under the Agricultural College grant of 1862, under which plaintiff claims, vested in the State until their selection and listing to the State, which was subsequent to the time at which the title of the United States passed to the defendant. *Ib.*

18. No trust was created by such grant which prevented land subject to selection thereunder from being taken under prior selections in satisfaction of other grants. No trust could arise against the State thereunder until its receipt of all or a portion of the proceeds arising from the sale of the property, and no disposition of such proceeds could affect the title acquired by other parties, from the sale of such lands thereunder. *Ib.*

19. Defendant having, after his general denial of the allegations of the complaint, for a further separate answer and defence, set up his claim of title to demanded premises by cross-complaint, and prayed affirmative relief thereon by cancellation of the State's patent to the plaintiff, or by charging him as a trustee of the title and compelling him to convey the premises to the defendant, such a mode of setting up an equitable defence to an action for the possession of land being allowable under the system of civil procedure prevailing in California, the judgment of the Supreme Court of that State, declaring such trust and directing such conveyance, is affirmed. *Ib.*

See JURISDICTION, A, 5, 10;
TAX AND TAXATION, 1.

QUIA TIMET.

See ADVERSE POSSESSION.

RAILROAD.

1. A railroad company is not responsible for an injury done to a passenger in one of its trains by the conductor of the train, if the act is done in self-defence against the passenger and under a reasonable belief of immediate danger. *New Orleans & Northeastern Railroad Co.* v. *Jopes*, 18.

2. A ferry company operating a ferry across a navigable river and owning the land at the landing and about the approaches to it, contracted with a railroad company for the use of the land for the purposes of its business so long as they should be used and employed for such uses and purposes. The railroad company in consideration thereof agreed to pay the taxes on the land, and not to interfere with the ferry company in respect of its ferry, and to always employ the ferry company in its transportation across the river. The railroad com-

pany entered upon the land, and laid down tracks and performed its part of the contract until it became insolvent, and a mortgage upon its property was foreclosed. The property was purchased by a new railway company, which continued to carry on the business as it had been carried on before, but without making any new contract, or any special agreement for rent. After continuing to carry on the business in this way for some time, the railway company diverted a portion of its transportation across the river to other carriers. Subsequently a further diversion was made, and then the company became insolvent, and a receiver was appointed. This officer also continued to carry on the business, and without making any special agreement: but eventually he wholly diverted the business and removed all the rails and tracks from the premises. The ferry company then intervened in the suit against the railway company in which a receiver had been appointed, claiming to recover compensation for the use of its property by the railway company and by the receiver, and for the value of the materials removed from the premises when possession was surrendered. The court below dismissed this petition and allowed an appeal. *Held*,

(1) That the contract did not create the relation of landlord and tenant; that no rent having been reserved, or claimed, or paid during the whole occupation, the conduct of the parties was inconsistent with such a relation; and that under such circumstances such a relation would not be implied;

(2) That the railway company, under the circumstances, acquired an equitable estate in the premises of like character with the legal estate previously held by the railroad company; and that both parties were equitably estopped from denying that such was the case;

(3) That the ferry company having, up to the argument in this court, conducted the litigation solely on the theory that it was entitled as landlord to recover the rental value of the premises in question, this presented a serious obstacle in the way of doing substantial justice between the parties; but,

(4) That a mistaken view of one's rights or remedies should not be permitted wholly to defeat a claim founded upon principles of equity and justice, and if the pleadings can be so amended as to admit proof of such claim, and such amendment does not introduce a new cause of action, though it may set up a new measure of damages, or work a real hardship to the party defendant, it is within the discretion, even of the appellate court, to permit such amendment to be made;

(5) That the ferry company was not entitled to recover the value of the rails removed by the receiver. *Wiggins Ferry Co.* v. *Ohio & Mississippi Railway Co.*, 396.

See CONSTITUTIONAL LAW, A, 7, 10; B, 2;
EQUITY, 2;
LOCAL LAW, 2;
MANDAMUS, 2, 3.

REMOVAL OF CAUSES.

1. The act of March 3, 1887, 27 Stat. 552, c. 373, with regard to the removal of causes from state courts, (corrected by the act of August 13, 1888, 25 Stat. 433, c. 866,) repealed subdivision 3 of Rev. Stat. § 639. *Fisk* v. *Henarie*, 459.
2. The words in that act "at any time before the trial thereof," used in regard to removals "from prejudice or local influence" were used by Congress with reference to the construction put on similar language in the act of March 3, 1875, 18 Stat. 470, c. 137, by this court, and are to receive the same construction, which required the petition to be filed before or at the term at which the cause could first be tried, and before the trial thereof. *Ib.*

RESCISSION OF CONTRACT.

1. In a suit in equity for the rescission of a contract of purchase, and to recover the moneys paid thereon on the ground that it was induced by the false and fraudulent representations of the vendors, if the means of knowledge respecting the matters falsely represented are equally open to purchaser and vendor, the former is charged with knowledge of all that by the use of such means he could have ascertained: and *a fortiori* he is precluded from rescinding the contract and from recovery of the consideration money if it appears that he availed himself of those means, and made investigations, and relied upon the evidences they furnished, and not upon the representations of the vendor. *Farnsworth* v. *Duffner*, 43.
2. It is no ground for rescinding such a contract that the agents of the vendors, who had received the full purchase money agreed upon, misappropriated a part of it. *Ib.*
3. Statements by a vendor of real estate to the vendee, (made during the negotiations for the sale,) as to his own social and political position and religious associations, are held, even if false, not to be fraudulent so as to work a rescission of the contract of sale. *Ib.*

RIPARIAN OWNER.

1. In Wisconsin the ownership of riparian proprietors extends to the centre or thread of the stream, subject, if such stream be navigable, to the right of the public to its use as a public highway for the passage of vessels; and the law, so settled by the highest court of the State, is controlling in this court as a rule of property. *Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 254.
2. A state legislature may authorize the taking of land upon or riparian rights in a navigable stream, for the purpose of improving its navigation, and if a surplus of water is created, incident to the improvement, it may be leased to private parties under authority of the State, or retained within control of the State; but so far as land is taken for the purpose of the improvement, either for the dam itself or the em-

bankments, or for the overflow, or so far as water is diverted from its natural course, or from the uses to which the riparian owner would otherwise be entitled to devote it, such owner is entitled to compensation. *Ib.*

3. The act of March 3, 1875, 18 Stat. 506, c. 166, "to aid in the improvement of the Fox and Wisconsin Rivers, in the State of Wisconsin," provided a mode for obtaining compensation to persons injured by the taking of their land or their riparian rights in making such improvements; and, as it remained in force for thirteen years, it gave to persons injured a reasonable opportunity for obtaining such compensation, and if they failed to avail themselves of it, they must be deemed to have waived their rights in this respect. *Ib.*
4. Such an owner, who fails to obtain compensation, for the taking of his property for use in a public improvement, by reason of his own neglect in applying for it, cannot violently interfere with the public use, or divert the surplus water for his own use. *Ib.*
5. It is not decided whether or not a bill in equity, framed upon the basis of a large amount of surplus water not used, will lie to compel an equitable division of the same upon the ground that it would otherwise run to waste. *Ib.*

SECRETARY OF THE TREASURY.

See INSPECTOR OF IMMIGRATION.

SELF-DEFENCE.

The law of self-defence justifies an act done in honest and reasonable belief of immediate danger; and, if an injury be thereby inflicted upon the person from whom the danger was apprehended, no liability, civil or criminal, follows. *New Orleans & North Eastern Railroad Co.* v. *Jopes*, 18.

See RAILROAD, 1.

SERVICE OF PROCESS.

See LACHES, 1.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. Upon the construction of the constitution and laws of a State, this court, as a general rule, follows the decisions of its highest court, unless they conflict with or impair the efficacy of some provision of the Constitution or of a law of the United States, or a rule of general commercial law. *Stutsman County* v. *Wallace*, 293.
2. In the case of an appeal from a judgment of the Supreme Court of a Territory, which was admitted as a State after the appeal was taken, a subsequent judgment of the highest court of the State upon the construction of a territorial law involved in the appeal is entitled to be

followed by this court in preference to its construction by the Supreme Court of the Territory. *Ib.*

3. The rule that the known and settled construction of a statute of one State will be regarded as accompanying its adoption by another is not applicable where that construction had not been announced when the statute was adopted; nor is it when the statute is varied and changed in the adoption. *Ib.*
4. When the Executive Department charged with the execution of a statute gives a construction to it, and acts upon that construction for a series of years, the court looks with disfavor upon a change whereby parties who have contracted with the government on the faith of the old construction may be injured; especially when it is attempted to make the change retroactive, and to require from the contractor repayment of moneys paid to him under the former construction. *United States* v. *Alabama Great Southern Railroad Co.*, 615.

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS, 2, 4; JURISDICTION, A, 7.

B. STATUTES OF THE UNITED STATES.

See BANKRUPT, 2;
CONSTITUTIONAL LAW, A, 13, 17, 24;
CRIMINAL LAW, 1;
CUSTOMS DUTIES, 1, 2;
HABEAS CORPUS, 2;
INSPECTOR OF IMMIGRATION;
INTERNAL REVENUE, 1;
JURISDICTION, A, 1, 5, 12;
MAILS, TRANSPORTATION OF;
NATIONAL BANK, 1;
PUBLIC LAND, 9, 13, 15, 17;
REMOVAL OF CAUSES, 1, 2;
RIPARIAN OWNER, 3;
WRIT OF PROHIBITION.

C. STATUTES OF STATES AND TERRITORIES.

California. *See* TRUST, 3.
Colorado. *See* JURISDICTION, A, 5;
MUNICIPAL BOND, 1.
Dakota. *See* TAX AND TAXATION.
Florida. *See* LOCAL LAW, 1.
Iowa. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 3;
MUNICIPAL BOND, 3.
Illinois. *See* EQUITY, 1;
LOCAL LAW, 2.
Louisiana. *See* CONSTITUTIONAL LAW, A, 5.
Maine. *See* CONSTITUTIONAL LAW, A, 7.
Missouri. *See* BILL OF EXCHANGE;
CONSTITUTIONAL LAW, B, 1;
MECHANICS' LIEN, 2.
New York. *See* CONSTITUTIONAL LAW, A, 6.
South Carolina. *See* CONSTITUTIONAL LAW, A, 10.
Texas. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 1.

STOCK EXCHANGE.

See BANKRUPT, 1.

TAX AND TAXATION.

1. Following the decision of the Supreme Court of North Dakota as to the tax laws of Dakota Territory; *Held*, (1) That an erroneous decision of an assessor of taxes under those laws in the matter of exemptions does not deprive the tax proceedings of jurisdiction, and that, until such erroneous decision is modified or set aside by the proper tribunal, all officers with subsequent functions may safely act thereon; and that the rule of *caveat emptor* applies to a purchaser at a tax sale thereunder; (2) That under those laws a county treasurer, in making a sale for non-payment of taxes, acts ministerially, the law furnishing the authority for selling the property for delinquent taxes, and the warrant indicating the subjects upon which that authority is to be exercised; and he is protected, so long as he acts within the statute; (3) That in the case of lands granted to the Northern Pacific Railroad Company, on which the costs of survey had not been paid and for which no patents had been issued, it was his duty to proceed to sell, notwithstanding those facts; and that, when the title of the purchaser at the tax sale failed, by reason of the lands not being subject to taxation, the county was not liable for the purchase money, under c. 28, § 78, of the Political Code of 1877. *Stutsman County* v. *Wallace*, 293.
2. Diversity of taxation, both with respect to the amount imposed and the various species of property selected, either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality in taxation, and of a just adaptation of property to its burdens. *Pacific Express Co.* v. *Seibert*, 339.
3. A system of taxation which imposes the same tax upon every species of property, irrespective of its nature, or condition, or class, will be destructive of the principle of uniformity and equality in taxation, and of a just adaptation of property to its burdens. *Ib.*

See CONSTITUTIONAL LAW, A, 7; B, 1, 2;
JURISDICTION, A, 10;
LOCAL LAW, 1.

TOWN SITE ACT.

See JURISDICTION, A, 5.

TRESPASS.

See ADVERSE POSSESSION.

TRUST.

1. G. conveyed to S. a "mining claim and lode" in Utah, and S. executed a declaration of trust that the conveyance had been made to him

"upon trust to receive the issues, rents and profits of the said premises, and to apply the same as received": (1) to the payment of operating expenses; (2) to the repayment to S. of $400,000 advanced by him, as trustee, to G. for the purchase of the interest of his cotenants together with other trusts. After taking out about $20,000, the vein was lost, and fruitless attempts were made to recover it, which resulted in an indebtedness of about $52,000. The holder of these claims filed a bill against S., G. and others to charge the mining property itself with their payment, and to have it sold to satisfy them, no personal decree being asked against any defendant. *Held*, (1) That, as a result of these transactions, a debt was created and the mining property itself was pledged for the payment of that debt, and of the reasonable expenses incurred in the operation of the mine, and not simply its rents and profits; (2) That the instruments did not create a mortgage, but an active and express trust, which was not subject to the rule that when an action on the debt is barred, action on the mortgage given to secure it is also barred. *Gisborn* v. *Charter Oak Life Insurance Co.*, 326.

2. Where the manifest purpose of a transaction is security for a debt created, and title is conveyed, the mere direction to appropriate the rents and profits to its payment will not relieve the realty from the burden of the lien or limit the latter solely to the rents and profits: the test is, the manifest purpose. *Ib.*

3. In California, (from which the Territory of Utah took its statute of limitations,) the statute does not begin to run, in the case of an express trust, until the trustee, with the knowledge of the *cestui que trust*, has disavowed and repudiated the trust. *Ib.*

4. It is an undoubted proposition of law that the grantor of lands conveyed in trust is the only party to challenge the title in the hands of the trustee, or others holding under him, on account of a breach of that trust. *United States* v. *Des Moines Navigation & Railway Co.*, 510.

See BANKRUPT, 1;
PUBLIC LAND, 18, 19, 20.

WITNESS.

A full and unconditional pardon of a person convicted of larceny and sentenced to imprisonment therefor completely restores his competency as a witness, although it may be stated in the pardon that it was given for that purpose. *Boyd* v. *United States*, 450.

See CONSTITUTIONAL LAW, A, 13 to 23.

WRIT OF ERROR.

Upon writ of error, no error in law can be reviewed which does not appear upon the record or a bill of exceptions made part of the record. *Claassen* v. *United States*, 140.

WRIT OF PROHIBITION.

The collector of customs at the port of New York seized a British built steam pleasure-yacht, purchased in England by a citizen of the United States, and duly entered at that port, the seizure being for the alleged reason that the vessel was liable to duty as an imported article. Her owner filed a libel in admiralty against her and the collector in the District Court of the United States for the Southern District of New York, claiming the delivery of the vessel to him and damages against the collector. Under process from the court the vessel was attached and taken possession of by the marshal, and due notice was given. The collector appeared personally in the suit, and put in an answer, and the district attorney put in a claim and an answer on behalf of the United States. The substance of the answers was that the vessel was liable to duty as an imported article. The collector applied to this court for a writ of prohibition to the District Court, alleging that that court had no jurisdiction of the suit. This court, without considering the question of the liability of the vessel to duty, denied the writ on these grounds: (1) The District Court had jurisdiction of the vessel and of the collector; (2) The question whether the vessel was liable to duty as an imported article was *sub judice* in the District Court; (3) The subject matter of the libel was a marine tort, cognizable by the District Court; (4) It being alleged in the answers, that the vessel was detained by the collector "under authority of the revenue laws of the United States," she was, under § 934 of the Revised Statutes, subject to the order and decree of the District Court; (5) The libellant had no remedy under the Customs Administrative act of June 10, 1890, 26 Stat. 131; and the only way in which the vessel could be brought under the jurisdiction of a court of the United States was by the institution of the libel. *In re Fassett*, 479.